No. 80-1070

Office-Supreme Court, U.S.
FILED
MAY 26 1981
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

JOINT APPENDIX

Peter M. Garcia
(Counsel of Record)
377 Main Street
Lewiston, ME 04240
Tel.: (207) 784-4534
Counsel for Petitioner
Donna Ridgway

Stephen P. Beale
(Counsel of Record)
Robert Checkoway
465 Main Street
Lewiston, ME 04240
Tel.: (207) 784-1371
Counsel for Petitioner
The Prudential Insurance
Company of America

G. Curtis Webber
(Counsel of Record)
83 Pleasant Street
Auburn, ME 04210
Tel.: (207) 784-4563
Counsel for Respondents

Filed December 23, 1980

Certiorari
granted March 9, 1981

TABLE OF CONTENTS

Docket Entries, Superior Court for Androscoggin County...1

Docket Entries, Maine Supreme Judicial Court 8

Verified Complaint dated April 13, 1979, with attached Exhibits A, B and C 11

Plaintiff's Request for Temporary Restraining Order dated April 13, 1979, together with attached Affidavit.....18

Temporary Restraining Order issued by Justice Delahanty on April 13, 1979 19

Summons dated April 13, 1979, bearing sheriff's return dated April 17, 1979.....20

Defendant Prudential's Answer to Complaint, dated June 8, 1979 22

Joint Motion to Add Donna Ridgway as Party Plaintiff dated June 8, 1979 23

Order dated June 21, 1979, granting Motion to Add Party Plaintiff 24

Motion to Amend Complaint by substituting Hayley D. Ridgway et al as named Plaintiffs and by adding Count II to Complaint; Motion to Add Cross-Claim against Co-Plaintiff Donna Ridgway; dated June 20, 1979 24

Defendant Prudential's Answer to Complaint of Plaintiff Donna Ridgway, dated June 27, 1979 27

Defendant's Motion for Consolidation of Hearing on Preliminary and Permanent Injunctions, dated June 28, 1979 28

Defendant's Motion to Dismiss Count II of Plaintiff April Ridgway's Amended Complaint, dated July 2, 1979 29

Entry of Appearance by Peter M. Garcia, Esq. as counsel for Plaintiff Donna Ridgway, dated July 10, 1979 31

Order granting Plaintiff's Motion to Amend Complaint and to add Cross-Claim, dated July 23, 1979 32

Stipulation dated August 13, 1979.....33

Answer and Defenses of Donna Ridgway to Cross-Claim of Hayley D. Ridgway et al, dated August 13, 1979 34

Defendant Prudential's Answer to Amended Complaint of Plaintiff Hayley D. Ridgway et al, dated August 17, 1979 35

Order of the Superior Court dated September 13, 1979 37

Decision and Order of Superior Court dated September 14, 1979 38

Amendment to Decision and Order of Superior Court, dated September 20, 1979 44

Notice of Appeal by Plaintiffs Hayley D. Ridgway et al, dated September 20, 1979 45

Further Amendment to Decision and Order of Superior Court, dated October 11, 1979.....46

Notice of Appeal from Further Amended Decision, dated October 18, 1979.....47

Stipulation Setting Forth Issue on Appeal, dated October 22, 1979 48

Motion Regarding Deposited Funds, dated November 1, 1979, and Order issued on said Motion, dated December 20, 1979.....49

Decision of Maine Supreme Judicial Court, dated September 26, 1980 50

Mandate of Maine Supreme Judicial Court, dated September 25, 1980 60

Docket Entries, Superior Court for Androscoggin County

Date Filed April 13, 1979
ANDROSCOGGIN County Docket No. CV-79-209

Action DECLARATORY JUDGMENT AND INJUNCTION

APRIL D. RIDGWAY, in her capacity as next friend of HAYLEY DAWN, LAURIE ROBIN, and BRADY LEIGH RIDGWAY	vs.	PRUDENTIAL INSURANCE COMPANY OF AMERICA,

17 Beacon Avenue
Auburn, Maine and
Donna Ridgway
(Party Plaintiff)

Plaintiff's Attorney	Defendant's Attorney
Curtis Webber	Stephen Beale
LINNELL, CHOATE & WEBBER	SKELTON, TAINTOR & ABBOTT
83 Pleasant St.	465 Main Street
Auburn, Maine 04210	Lewiston, Maine 04240
	Peter Garcia
	ORESTIS & GARCIA
	377 Main Street
Date of Entry	Lewiston, Maine 04240
	(For: Donna Ridgway)

1979	
April 13:	Complaint seeking Declaratory Judgment and Injunction filed.
April 13:	Plaintiff's Request for Temporary Restraining Order filed.
April 13:	Affidavit of Curtis Webber filed.
April 13:	Exhibits A, B, & C, (attached to complaint), filed.
April 13:	Temporary Restraining Order without Notice filed. (Delahanty J.) COURT ORDERS that defendant and all persons in its behalf be, and they hereby are, res-

trained from paying out the proceeds of a certain insurance policy issued on the life of Richard H. Ridgway more fully described in the verified complaint pending further order of the Court and that plaintiff's prayer for a preliminary injunction be and it hereby is set down for hearing before this Court at the Androscoggin County Courthouse, Turner Street, Auburn, Maine on April 23, 1979 at 9:30 o'clock A.M.

This temporary restraint is ordered without requiring that security be furnished pursuant to M.R.C.P. Rule 65(c) for the following good cause: This order will not subject defendant to pecuniary loss since it has no personal claim to the funds in question and upon the representation of counsel that defendant's representatives have indicated to him that defendant would not object to a judicial resolution of the dispute over entitlement to the insurance proceeds in question.

April 16: Copies of Temporary Restraining Order without Notice mailed to Curtis Webber and Winfred S. Gideon, Director - Office of Servicemen's Group Life Insurance this day.

April 23: Hearing on Preliminary Injunction set for this day. No hearing held. Continued by agreement of counsel to May 29, 1979 at 9:30 a.m.

April 25: Summons, filed. Defendant, Prudential Insurance Company served on April 17, 1979.

April 30: Plaintiff's Motion for Continuance of hearing on Preliminary Injunction, filed. Seen and agreed to.

May 1: Plaintiff's Motion for Continuance of hearing, granted, (McCarthy J.) case to be reset.

May 1: Copies of Plaintiff and Defendant's Motion for Continuance mailed to counsel, C. Webber and S. Beale, this day.

May 29: Correspondence from S. Beale, RE: This case was to be set for hearing on the May 29, 1979 but was inadvertently not placed on the list therefore this is a confirmation that it is to be rescheduled for June 26, 1979 at 1:30 p.m. and is allotted One to one and one half hours of time, filed.

June 8: Defendant's Answer, filed.

June 19: Joint Motion to Add Party Plaintiff, M.R.C.P. 19, filed.

June 21: Joint Motion to Add Party Plaintiff, granted. (Silsby J.)

June 21: Plaintiff's Motion for Continuance, filed and granted. (Silsby J.) Without Objection.

June 21: Plaintiff's Motion to Amend Complaint and Cross-Claim, filed. Notice of Motion for July 9, 1979 at 9:30 a.m., filed. Certificate of Service, filed. Cross-claim, filed. (Exhibit A) Divorce Judgment, filed. (Exhibit A) Summons, filed.

June 22: Copies of Joint Motion to Add Party Plaintiff and of Plaintiff's Motion for Continuance mailed to counsel, C. Webber and S. Beale, this day.

June 25: Written notice mailed to counsel, C. Webber and S. Beale, RE: Plaintiff's Motin to Amend Complaint and Cross-Claim set for July 23, 1979 at 9:30 a.m. rather than the noticed July 29, 1979

June 28: Correspondence from C. Webber, RE: Hearing on merits, filed.

June 29: Answer to Complaint of Plaintiff Donna Ridgway, filed.

July 2: Defendant's Motion for Consolidation M.R.C.P 65 (b) (2), filed. Seen and agreed to.

July 3: Defendant's Motion to Dismiss Count II of Plain-

tiff April D. Ridgway's Amended Complaint, filed. Request for hearing for August 13, 1979 at 1:30 p.m. filed.

July 12: Correspondence from P. Garcia, RE: Entering his appearance on behalf of Donna Ridgway, filed.

July 23: Hearing held on Plaintiff's Motion to Amend Complaint and Cross-Claim. (Scolnik, J. Presiding, James Trudeau Reporter)
Motion granted. Complaint and cross-claim amended as prayed.

July 24: Copies mailed Stephen Beale and G. Curtis Webber.

August 13: Hearings held on Preliminary and Permanent Injunction, Motion for Consolidation, and motions to Dismiss, (Scolnik J.) Court takes matters under advisement.

August 20: Copy of Reply Memorandum of Plaintiff Donna Ridgway, filed.

August 20: Memorandum of Defendant, The Prudential Insurance Company of America, filed.

August 20: Defendant's Answer to Count II of Amended Complaint of Hayley Ridgway et al, filed.

August 13: Stipulation, filed. (marked as Plaintiff's Exhibit #2)

August 13: Answer and Defenses of Donna Ridgway to Complaint of Hayley D. Ridgway et al., amended, filed.

August 13: Trial Memorandum of Plaintiff, Donna Ridgway, filed.

August 17: Reply Brief of Plaintiffs Hayley Ridgway, et al, filed.

August 24: Reply to Point II of Donna Ridgway's Reply

Memorandum, filed. (in letter form)

Sept. 17: Reply Memorandum of Plaintiff, Donna Ridgway, filed.

Sept. 17: Plaintiff's Memorandum of Law, filed.

Sept. 17: Decision and Order, filed. (Scolnik J.)

Sept. 17: JUDGMENT: The Plaintiff, April Ridgway's request on behalf of her minor children, for a declaratory judgment and for injunctive relief against the Defendant. Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Sept. 18: Copies of Decision and Order mailed to counsel, C. Webber, P. Garcia and S. Beale, this day.

Sept. 21: Amendment to Decision and Order, filed. (Scolnik J.)

Court orders all references to Donna Ridgway Pinjani are changed to read Donna Ridgway.

Sept. 24: Copies of Amendment to Decision and Order mailed to counsel, C. Webber, P. Garcia and S. Beale.

Sept. 26: Plaintiff's Notice of Appeal to the Law Court from the judgment of this Court issued on September 14, 1979, filed.

Sept. 28: Copy of Plaintiff's Notice of Appeal mailed to S. Beale and P. Garcia, this day.

Sept. 28: Copy of Plaintiff's Notice of Appeal and Superior Court Docket entries mailed to James Chute, Clerk, Law Court, this day.

Oct. 5: Certificate regarding transcript and designation of issues on appeal, filed.

Oct. 12: Further Amendment to Decision and Order, filed. (Scolnik J.)

Court orders the Decision and Order of this Court dated September 14, 1979 as previously amended is further amended as follows:

On the final page of the Order, the entry of Judgment is amended by striking out the period after the words "constructive trust is *DENIED*." and adding the words: "and her cross claim is *DISMISSED*."

Oct. 12: Copies of Further Amendment to Decision and Order Mailed to counsel, P. Garcia, S. Beale, C. Webber and copy to James Chute, Clerk of the Law Court, this day.

Oct. 22: Plaintiffs' Notice of Appeal to the Law Court from the Decision and Order of the Superior Court dated September 14, 1979 as amended on September 20, and October 11th, filed.

Oct. 24: Attested copy of Plaintiff's Notice of Appeal and of the Superior Court docket entries mailed to James Chute, Clerk of the Law Court, this day.

Oct. 24: Attested copy of Notice of Appeal mailed to counsel, P. Garcia and Stephen Beale, this day.

Oct. 29: Copy of Stipulation, filed.

Oct. 31: Original Stipulation that was sent to the Law Court received and filed this day.

Nov. 7:	Correspondence from C. Webber, RE: No transcript needed filed.
Nov. 8:	L-A-W
Nov. 8:	Entire file along with an attested copy of Superior Court docket entries trasmitted to the Law Court, this day. First class mail.
Nov. 8:	Counsel, C. Webber, S. Beale and P. Garcia notified this day of transmittal of record to the Law Court.
1980	
June 25:	Certificate of Deposit issued on 12/21/79 having reached its maturity as of this day, principal $21,109.60, plus interest on certificate $1,263.00, totalling $22,372.60 transferred to a regular savings account #03-670-520-0 per instructions of Attorney Peter Garcia. Copy of above docket entries mailed G. Curtis Webber, Peter Garcia and Stephen Beale.

Docket Entries, Maine Supreme Judicial Court

SUPREME JUDICIAL COURT DOCKET NO. And-79-30
SITTING AS THE LAW COURT

COUNTY Androscoggin

ON APPEAL BY Plaintiffs

Hayley Dawn Ridgway, Laurie Robin Ridgway and Brady Leigh Ridgway by their mother and next friend, April D. Ridgway and Donna Ridgway	vs.	Prudential Insurance Company Of America

ATTY. FOR PLTF.

Curtis Webber, Esq. (orally)
Linnell, Choate & Webber
83 Pleasant Street
Auburn, Maine 04210

ATTY. FOR DEFT.

Stephen P. Beale, Esq. (orally)
Skelton, Taintor & Abbott
465 Main Street
Lewiston, Maine 04240

Peter Garcia (orally)
Orestis & Garcia
377 Main Street
Lewiston, Maine 04240
(for Donna Ridgway) (Appellee)

Nov. 9, 1979	Original record filed.
Dec. 19, 1979	Stipulation filed extending time to file the Appellants' brief to December 24, 1979.
Dec. 26, 1979	Appellants' brief and appendix filed.
Jan. 21, 1980	Stipulation filed extending time to file the Appellee's brief to January 28, 1980.
Jan. 28, 1980	Brief filed by Defendant-Appellee, The Prudential Insurance Company of America.
Jan. 29, 1980	Stipulation filed extending time to file the

	brief of Appellee Donna Ridgway to February 4, 1980.
Feb. 5, 1980	Stipulation filed extending time to file the brief of Appellee Donna Ridgway to February 11, 1980.
Feb. 5, 1980	Brief filed by Plaintiff-Appellee Donna Ridgway.
Feb. 22, 1980	Stipulation for enlargement of time to file Reply brief filed. Time enlarged to 2/28/80
Mar. 6, 1980	Reply brief filed by Plaintiffs-appellants.
Mar. 10, 1980	Completed stipulation filed enlarging time to file the reply brief to March 6, 1980. Original stipulation filed February 29, 1980.
Mar. 14, 1980	Certificate of service filed by Curtis Webber, Esq.
Mar. 17, 1980	Case argued. Wernick, J. did not sit. (off)
Sept. 26, 1980	Mandate filed. "Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Serviceman's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs." Glassman, J.

Oct. 6, 1980	Verified bill of costs filed.
Oct. 9, 1980	Certificate of costs issued. Original to clerk and copies to counsel.
Oct. 10, 1980	Mandate issued to Clerk of Superior Court.
Mar. 12, 1981	Order allowing certiorari filed. The petiton herein for a writ of certiorari to the Supreme Judicial Court of Maine is granted.

Verified Complaint dated April 13, 1979,
with attached Exhibits A, B and C

1. Plaintiff is the mother of Hayley Dawn, Laurie Robin and Brady Leigh Ridgway, minor children of herself and Richard H. Ridgway.

2. Plaintiff and Richard H. Ridgway were divorced on December 7, 1977. A copy of said divorce decree is annexed hereto as exhibit A.

3. At the time of the divorce, Richard H. Ridgway, who was then a Sergeant in the U. S. Army, had in force a $20,000 insurance policy on his life with the defendant insurance company. The policy number was Group Insurance Contract G-32000.

4. Although directed by the divorce judgment to do so, Sergeant Ridgway did not make his children the beneficiaries of said life insurance and instead, directed that the insurance proceeds be paid as specified "by law". Sergeant Ridgway is now deceased.

5. Defendant insurance company has advised that it interprets the designation "by law" as requiring it to pay the policy proceeds to Donna Ridgway of Huntsville, Alabama, whom Sergeant Ridgway married subsequent to his divorce from April D. Ridgway.

6. Unless injunctive relief is granted to prevent it from doing so, defendant has indicated that it will pay out the policy proceeds. See letter from Winfred S. Gideon 3rd attached hereto as exhibit B.

7. The minor children on whose behalf this suit is being brought will be irreparably injured by such payment and have no adequate remedy at law to prevent it.

8. A case or controversy is presented as to the correct interpretation of the insurance policy in question since defendant interprets the policy and applicable law as requiring it to pay over the

policy proceeds to Donna Ridgway. See letter of Winfred S. Gideon, 3rd attached hereto as exhibit C.

WHEREFORE plaintiff requests a judgment declaring that the minor children of April D. and Richard H. Ridgway are entitled to receive the aforesaid life insurance proceeds and permanently enjoining defendant, and all persons acting in its behalf from paying said proceeds to Donna Ridgway or any other person.

PRAYER FOR PRELIMINARY INJUNCTION

Plaintiff further prays that a preliminary injunction issue enjoining defendant and all persons acting on its behalf from paying out the life insurance proceeds in question pending final order of this Court. The grounds of this motion are that:

(1) Unless restrained, defendant will pay out the insurance proceeds in question to Donna Ridgway.

(2) Donna and Richard H. Ridgway had substantial indebtedness, but Richard's estate was insolvent so that if the insurance proceeds are paid out as aforesaid, there is a substantial likelihood that they will be used to pay debts of the estate or debts of Donna Ridgway so that any judgment later rendered in favor of the minor children on whose behalf this suit is being brought would be uncollectible.

(3) Granting the preliminary injunction prayed for will cause no pecuniary loss to defendant since it is merely the stakeholder of the insurance proceeds and has no financial interest in the outcome of these proceedings.

EXHIBIT A

STATE OF MAINE
ANDROSCOGGIN, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 75-29

APRIL D. RIDGWAY,

Plaintiff

v.

RICHARD D. RIDGWAY,

Defendant

DIVORCE JUDGMENT

Notice of the pendency of the complaint in this cause of divorce has been duly and seasonably given according to law. This cause was heard before me and the allegations and the evidence were fully presented and considered. A divorce from the bonds of matrimony is hereby ordered and adjudged to this plaintiff from this defendant for the cause of cruel and abusive treatment.

It is further ordered that the care and custody of the parties' three children be awarded to the plaintiff with reasonable rights of visitation to the defendant. Defendant is ordered to pay for the support of the children the sum of $75 per month per child beginning January 1, 1978. The support payments shall be increased to $80 per month per child effective August 1, 1979. Effective August 1, 1980, the support payments shall increase to $90 per month per child unless defendant did not receive a cost of living increase in his pay between August 1, 1979 and August 1, 1980 in which case said $10 increase in support payments shall not be effective until such time subsequent to August 1, 1980 as defendant does receive a cost of living increase.

In addition to regular support payments, defendant shall pay to the plaintiff the sum of $100 each quarter, the first payment to be received on or before March 1, 1978, to be used for the purchase of clothing for the parties' children.

Defendant shall be responsible for all medical, dental, and optical expense attributable to the parties' three children. Such bills shall be sent directly to the defendant for payment where possible. In cases where plaintiff is required to pay for such services in cash, she shall furnish the defendant with a receipt for such payment which shall promptly be reimbursed. To the extent feasible, plaintiff will seek medical, optical and dental care and will process claims for the same in a manner so that they will be payable under defendant's serviceman's insurance.

Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

It is further ordered that the parties shall retain possession of the household furnishings and other items presently in their possession. Defendant shall assume sole responsibility for payment of loans and any other outstanding indebtedness incurred by the parties for family obligations prior to the time of their separation.

Defendant shall be entitled to claim one of the parties' three children as a tax exemption for federal and state income tax purposes for the calendar year 1977. Defendant shall be entitled to claim two of the parties' children as exemptions for the calendar year 1978.

Defendant is ordered to pay to plaintiff's attorney the sum of $1,000 as a partial payment for legal services rendered in connection with this divorce proceeding and all motions for support and arrearage in connection therewith including a motion which is presently under advisement. This order supersedes a previous order of this Court regarding counsel fees issued July 30, 1976. Said sum due as counsel fees shall be paid at the rate of $50.00 per month, first payment to be due on or before January 1, 1978.

Finally, defendant is ordered to assume outstanding loans of $156 and $160 from his mother to the plaintiff. This order renders

moot a requested contempt order seeking payment of arrearage and attorney's fees which was taken under advisement by Judge Violette after hearing held on October 24, 1977.

Dated December 7, 1977

s/William E. McCarthy
Superior Court Justice

EXHIBIT B

March 15, 1979

Mr. Curtis Webber
Linnell, Choate & Webber, Attorneys at Law
P.O. Box 190
83 Pleasant Street
Auburn, Maine 04210

Re: Richard H. Ridgeway
Soc. Sec. No.: 321-38-1413

Dear Mr. Webber:

This will supplement our telephone conversation on Tuesday.

As Rita Ridgway is contesting payment of the Servicemen's Group Life Insurance proceeds to Donna, based on the divorce judgement that the deceased was to maintain his children as the beneficiaries we have marked our file to that effect.

Unless legal action is commenced against us within 30 days from the date of this letter, we shall pay Donna Ridgway.

If you intend to sue us, it will be helpful for you to know that this insurance is provided by Group Insurance Contract G-32000

issued by the Prudential Insurance Company of America to the Administrator of Veterans Affairs. Prudential would be the proper party to the lawsuit. It is licensed to do business in the District of Columbia and all 50 states. Service of process may be obtained upon Prudential through your State Department of Insurance or by service on any Prudential Office.

Sincerely,

s/Winfred S. Gideon, 3rd

Winfred S. Gideon 3rd
Director OSGLI

WSG:MA
nb

EXHIBIT C

March 13, 1979.

Mr. Curtis Webber
Linnell, Choate & Webber
Attorneys at Law
P.O. Box 190
83 Pleasant Street
Auburn, Maine 04210

Soc. Sec. No.: 321 38 1413
In Re: Richard H. Ridgway

Dear Mr. Webber:

This is to acknowledge receipt of your letter dated February 16, 1979.

The administration of the Servicemen's Group Life Insurance Program is governed by Federal Law (Title 38, U.S.C.A. Section 765 et seq.). A copy of Public Law 89-214 is attached for your review. Please refer to Section 770 (A) which lists the Order of Precedence for this insurance.

The Branch of Service which maintains the insurance records of its personnel certified to this office that the deceased was insured for $20,000.00 and he elected payment of the Servicemen's Group Life Insurance proceeds to devolve "By Law" in the Order of Precedence as set forth in Section 770 (A) of Public Law 89-214.

Since the insured elected on April 3, 1978 to have his Servicemen's Group Life Insurance proceeds devolve "By Law", it appears we are bound to pay the insurance proceeds in accordance with Title 38, U.S. code section 770 (A) notwithstanding the divorce judgement incorporating a separation agreement whereby he was to maintain his children as the beneficiaries.

Also, as the deceased and Donna were not divorced prior to the insured's death on January 5, 1979, she was his legal spouse at death and entitled to receive the insurance proceeds.

We are sorry our reply could not have been more favorable.

Sincerely,

s/Winfred S. Gideon, 3rd

Winfred S. Gideon, 3rd
Director, OSGLI

WSG:MA
pm

Plaintiff's Request for Temporary Restraining Order dated April 13, 1979, together with attached Affidavit

Plaintiff moves for a temporary restraining order restraining defendant and all persons acting in its behalf from paying out the proceeds of a certain life insurance policy issued by it on the life of Sergeant Richard H. Ridgway more fully described in the verified complaint on the ground that immediate and irreparable injury will otherwise result to the minor children on whose behalf this suit is being brought before a hearing can be had on plaintiff's motion for a preliminary injunction for the reasons set forth in the verified complaint and the affidavit of Curtis Webber attached to this motion.

AFFIDAVIT

I, Curtis Webber, hereby state under oath as follows: In my capacity as attorney for plaintiff and her minor children, I have spoken by telephone with representatives of defendant Prudential Insurance Company of America concerning the disputed proceeds of a life insurance policy issued on the life of Richard H. Ridgway, now deceased. The representatives of the Company indicated that unless legal action was initiated within 30 days of written notification, it would pay out the proceeds in question to Donna Ridgway. These representatives indicated that the Company would have no objection to the bringing of such an action and would welcome a judicial resolution of the dispute. They provided me with the correct legal name of the company for purposes of such a proceeding and advised that the Company could be served with process through the State Insurance Commissioner's Office. Prudential Insurance Company is not presently represented by an attorney with regard to this matter.

Temporary Restraining Order issued by Justice Delahanty on April 13, 1979

This matter came on for hearing this date on plaintiff's verified complaint, affidavit of Curtis Webber, and motion for temporary restraining order and, it appearing to the Court that immediate and irreparable injury to the minor children represented by the plaintiff is likely to occur before notice can be served and a hearing had thereon in that defendant has stated that it would pay out the disputed life insurance proceeds to another person within 30 days after notice which period will expire April 18, 1979, April 17th being generally observed as a holiday, and it further appearing that there is a reasonable likelihood that plaintiff will prevail on the merits of the action presented by her verified complaint, it is hereby

ORDERED that defendant and all persons in its behalf be, and they hereby are, restrained from paying out the proceeds of a certain insurance policy issued on the life of Richard H. Ridgway more fully described in the verified complaint pending further order of the Court and that plaintiff's prayer for a preliminary injunction be and it hereby is set down for hearing before this Court at the Androscoggin County Courthouse, Turner Street, Auburn, Maine on April 23, 1979 at 9:30 o'clock A.M.

This temporary restraint is ordered without requiring that security be furnished pursuant to M.R.C.P. Rule 65(c) for the following good cause: This order will not subject defendant to pecuniary loss since it has no personal claim to the funds in question and upon the representation of counsel that defendant's representatives have indicated to him that defendant would not object to a judicial resolution of the dispute over entitlement to the insurance proceeds in question.

Issued at 3.00 o'clock P.M.
this 13th day of April, 1979

s/Thomas E. Delahanty

Associate Justice, Supreme Judicial Court acting as Superior Court Judge

Summons dated April 13, 1979, bearing sheriff's return dated April 17, 1979

TO THE ABOVE-NAMED DEFENDANT:

The Plaintiff April D. Ridgway, in her capacity has begun a lawsuit against you in this Court. If you wish to oppose this lawsuit, you or your attorney must prepare and file a written Answer to the attached Complaint with 20 _____days from the day this summons was served upon you. You or your attorney must file your Answer by delivering it in person or by mail to the office of the Clerk of the Superior Court, Androscoggin County Courthouse, Auburn, Maine. On or before the day you file your Answer, you or your attorney must mail a copy of your Answer to the Plaintiff's attorney, whose name and address appear below.

IMPORTANT WARNING: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU FILE YOUR ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR EMPLOYER MAY BE ORDERED TO PAY PART OF YOUR WAGES TO THE PLAINTIFF OR YOUR PERSONAL PROPERTY, INCLUDING BANK ACCOUNTS, AND YOUR REAL ESTATE MAY BE TAKEN TO SATISFY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS LAWSUIT, *DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.*

If you believe the Plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the office of the Clerk of Superior Courts, at the Androscoggin County Courthouse or any other County Courthouse, for information as to places where you may seek legal assistance.

DATED: April 13, 1979

s/Marian Kelleher

Clerk of Courts

(*Seal of Court*)

Curtis Webber, Esq.
Linnell, Choate & Webber
Name of Plaintiff's Attorney
83 Pleasant St., Aub., ME 04210
Address
784-4563
Telephone

Served on April 17, 1979
Date
Richard W. Craw
Deputy Sheriff

State of Maine
BUREAU OF INSURANCE
Augusta, Maine 04330

On the 17th day of April, 1979 at 1:55 P.M. (EST) the within copy of Civil Summons and Complaint Seeking Declaratory Judgment and Injunction for April D. Ridgway, in her capacity as next friend of Hayley Dawn, Laurie Robin, and Brady Leigh Ridgway vs. PRUDENTIAL INSURANCE COMPANY OF AMERICA was served upon me in hand by Richard Craw, Deputy Sheriff in and for the County of Kennebec, State of Maine.

s/Theodore S. Briggs
First Deputy Superintendent

Defendant Prudential's Answer to Complaint, dated June 8, 1979

NOW COMES Defendant Prudential Insurance Company of America and answers the complaint of Plaintiff April D. Ridgway as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the complaint, and accordingly denies the same.

2. The allegations of Paragraphs 2 through 6 and 8 of the complaint are admitted.

3. The allegations of Paragraph 7 are denied.

WHEREFORE, Defendant Prudential Insurance Company of America prays that this Court enter its judgment declaring that the proceeds of the subject life insurance policy are to be paid to Donna Ridgway, as named in Paragaraph 5 of Plaintiff's complaint, and for such other and further relief as may be just and proper.

Joint Motion to Add Donna Ridgway as Party Plaintiff dated June 8, 1979

Plaintiff April D. Ridgway and Prudential Insurance Company of America, through their attorneys, and Donna Ridgway, pro se, move and stipulate that said Donna Ridgway be joined in this action as Party Plaintiff, with the same force and effect as though she had been a named Plaintiff in the original summons and complaint herein at the time of commencement of this action; and as and for a cause of action in behalf of the said Donna Ridgway, that all of the allegations contained in the April 13, 1979, complaint of Plaintiff April D. Ridgway be deemed set forth at length as that of Plaintiff Donna Ridgway, except that the allegations of paragraphs 1 and 7 and prayer for preliminary injunction thereof be deemed deleted, and that instead said complaint be deemed to demand on behalf of said Donna Ridgway payment of the policy proceeds to her to the exclusion of Plaintiff April D. Ridgway; and further that the name of said Donna Ridgway be added to the summons and complaint and all further pleadings herein, and further that the Defendant Prudential Insurance Company of America file an Answer admitting or denying the allegations of the April 13, 1979 complaint of Plaintiff April D. Ridgway, as deemed to be the complaint of Plaintiff Donna Ridgway, with the exceptions above noted.

Order dated June 21, 1979, granting Motion to Add Party Plaintiff

Motion granted. s/ H. T. Silsby, J.

Motion to Amend Complaint by substituting Hayley D. Ridgway et al as named Plaintiffs and by adding Count II to Complaint; Motion to Add Cross-Claim against Co-Plaintiff Donna Ridgway; dated June 20, 1979

Plaintiff April D. Ridgway moves to amend her complaint and her cross claim by redesignating the parties plaintiff as "Hayley Dawn Ridgway, Laurie Robin Ridgway, and Brady Leigh Ridgway by their mother and next friend, April D. Ridgway" and further moves to amend her complaint against defendant Prudential Insurance Company of America by designating paragaraphs 1 through 8 as Count I and adding a second count as follows:

COUNT II

1. Plaintiff realleges by reference the allegations contained in Count I of the complaint.

2. Plaintiff has filed a cross claim against Donna Ridgway, widow of Richard D. Ridgway, alleging that Donna Ridgway stands in the position of constructive trustee as to any portion of the proceeds of the life insurance of Richard H. Ridgway which should be paid to her and demanding judgment ordering that said insurance proceeds be paid to April D. Ridgway as next friend and natural guardian of the three minor children. A copy of the cross claim is attached hereto as exhibit A.

WHEREFORE, in the event that judgment is granted on the cross claim declaring that Donna Ridgway stands in the position of constructive trustee as to said insurance proceeds, plaintiff requests that defendant be ordered to pay said proceeds directly to her in her capacity as next friend and natural guardian of the

three minor children for their exclusive benefit and that her receipt shall fully discharge the obligation of the defendant company under the insurance policy.

Exhibit A
CROSS CLAIM

1. Plaintiff April D. Ridgway in her capacity as next friend of her three children (hereinafter referred to simply as plaintiff Ridgway) has previously served a complaint against defendant Prudential Insurance Company of America (Prudential) seeking payment of certain life insurance proceeds payable upon the death of Richard H. Ridgway.

2. By motion dated June 8, 1979, plaintiff Donna Ridgway requested leave of court to join in these proceedings as plaintiff seeking payment to herself as widow of Richard H. Ridgway of the same insurance proceeds which are the subject of the previous action.

3. On December 7, 1977, a divorce was granted to plaintiff April Ridgway from Richard H. Ridgway. A copy of the divorce decree is attached hereto as exhibit A.

4. The terms of the divorce decree had been agreed upon in advance by plaintiff April D. Ridgway and Richard H. Ridgway for the benefit of themselves and their three minor children following months of negotiations regarding questions of support for the children, clothing allowances, assumption of responsibility for payment of existing bills, maintenance of existing life insurance and payment thereof, and attorneys' fees.

5. The terms of the decree concerning the property settlement and continuing financial obligations of Richard H. and April D. Ridgway represented compromises from the original positions taken by the respective parties and were agreed to upon the understanding that the terms of the parties' agreement setting forth their mutual duties and obligations would be incorporated into the final divorce decree for their mutual benefit and the benefit of their three minor children.

6. Paragraph 5 of the final divorce judgment required Richard H. Ridgway to keep in force his existing life insurance and make it payable to his three children.

7. On or before April 3, 1978, in violation of the terms of the aforesaid agreement between the parties to the divorce judgment and of the divorce judgment itself, Richard H. Ridgway purported to change the beneficiary designation on his life insurance policy by writing the words "at law" on a form provided for designating beneficiaries of servicemen's life insurance.

8. Defendant Prudential has taken the position that, as a result of the aforesaid purported change of beneficiary, it is legally obligated to pay the total proceeds of Richard H. Ridgway's life insurance to his widow, Donna Ridgway.

9. As a result of the facts recited above, Donna Ridgway stands in the position of a constructive trustee of said insurance proceeds for the benefit of the three minor children of Richard H. and April D. Ridgway.

WHEREFORE, plaintiff and cross claimant April D. Ridgway in her said capacity demands judgment against Donna Ridgway declaring that she has no legal right to retain the proceeds of the life insurance of Richard H. Ridgway as against his three minor children and that Donna Ridgway stands in the position of a constructive trustee for the benefit of said children of said insurance proceeds and directing defendant Prudential to pay said proceeds to plaintiff April Ridgway as the natural guardian and next friend of the three minor children and for their exclusive benefit, said payment to fully discharge the contractual obligation of defendant Prudential under said insurance policy.

Defendant Prudential's Answer to Complaint of Plaintiff Donna Ridgway, dated June 27, 1979

NOW COMES the Defendant in the above-entitled action, The Prudential Insurance Company of America, and answers the Complaint of Plaintiff Donna Ridgway, set forth by reference in the joint motion of said Donna Ridgway, fellow Plaintiff April D. Ridgway and Defendant The Prudential Insurance Company of America, dated June 8, 1979, as follows:

1. Defendant The Prudential Insurance Company of America admits the allegations contained in paragraph 2 of the Complaint of April D. Ridgway, dated April 13, 1979, as the same is made applicable to Plaintiff Donna Ridgway by reference in the parties' joint motion of June 8, 1979 (paragraph 1 of the said April 13 Complaint being deleted by the June 8 motion).

2. Defendant admits the allegations contained in paragraph 3 of the said Complaint attributed by reference to Donna Ridgway.

3. Defendant admits the allegations contained in paragraph 4 of the said Complaint attributed by reference to Donna Ridgway.

4. Defendant admits the allegations contained in paragraph 5 of the said Complaint attributed by reference to Donna Ridgway.

5. Defendant admits the allegations contained in paragraph 6 of the said Complaint attributed by reference to Donna Ridgway.

6. Defendant admits the allegations contained in paragraph 8 of the said Complaint attributed by reference to Donna Ridgway.

Defendant The Prudential Insurance Company of America admits all of the allegations of the said Complaint attributed by reference to Plaintiff Donna Ridgway. In view of the Complaint of Plaintiff April D. Ridgway against the Defendant in this action, seeking payment of the policy proceeds to Plaintiff April D. Ridgway, Defendant states that a genuine case or controversy exists, and will honor the Order of the Court regarding the disposition of the proceeds of the said insurance policy.

Defendant's Motion for Consolidation of Hearing on Preliminary and Permanent Injunctions, dated June 28, 1979

NOW COMES Defendant Prudential Insurance Company of America and moves that this Court order that trial of the action on the merits be advanced and consolidated with the hearing on Plaintiff April D. Ridgway's Application for Preliminary Injunction.

Plaintiff April D. Ridgway joins in the foregoing motion.

Plaintiff Donna Ridgway joins in the foregoing motion.

Defendant's Motion to Dismiss Count II of Plaintiff April Ridgway's Amended Complaint, dated July 2, 1979

Defendant, The Prudential Insurance Company of America, moves to dismiss Count II of the Amended Complaint of Plaintiff April D. Ridgway for the reason that the said Count II fails to state a claim against the Defendant upon which relief can be granted, for the following reasons:

1. The said Count II against Defendant is entirely subjunctive and speculative, in that it is conditioned entirely upon the occurrence of an uncertain future event, namely the potential future entry of judgment in favor of Plaintiff April D. Ridgway on her cross claim against Plaintiff Donna Ridgway.

2. The sole theory of April Ridgway's cross claim against Donna Ridgway is that of a constructive trust in favor of the minor children of Plaintiff April Ridgway.

3. The constructive trust theory set forth in the said cross claim supplements, modifies and amends the divorce judgment between April Ridgway and the late Richard Ridgway, which judgment is the sole basis of April Ridgway's original complaint against Defendant, The Prudential Insurance Company of America.

4. It is apparent from the face of the cross claim that its allegations must be proven, if at all, by oral testimony regarding negotiations prior to, and resulting in, the divorce judgment in its final written form.

5. Such supplementation, modification and amendment of the divorce judgment by oral testimony is barred as a matter of law by the Parol Evidence Rule.

6. The proper determination of the sole and absolute payee of the policy proceeds must be made solely on the law and must be based solely on the divorce judgment before the Court and the applicable federal statutory law, without extrinsic evidence.

7. For the foregoing reasons, Plaintiff April Ridgway's constructive trust theory, as a condition precedent to Count II of her amended complaint against the Defendant, is without legal basis.

WHEREFORE, Defendant The Prudential Insurance Company of America moves that Count II of the complaint of Plaintiff April D. Ridgway against Defendant be dismissed.

Entry of Appearance by Peter M. Garcia, Esq. as counsel for Plaintiff Donna Ridgway, dated July 10, 1979

Mrs. Marian Kelleher, Clerk
Androscoggin County Superior Court
2 Turner Street
Auburn, ME 04210

RE: Ridgway et al. v. The Prudential
Docket No. CV 79-209

Dear Marian:

Please note the entry of my appearance on behalf of Mrs. Donna Ridgway, Plaintiff by virtue of joint motion to add her as such, pursuant to M.R.C.P. 19 dated June 8, 1979.

All future notices concerning this matter should be directed to Mrs. Donna Ridgway in care of this office. Please be sure to note that we do not represent April Ridgway, a different party plaintiff who is represented by G. Curtis Webber, Esq.

Order granting Plaintiff's Motion to Amend Complaint and to add Cross-Claim, dated July 23, 1979

This cause came on for hearing, and was argued by counsel, upon the motion of the Plaintiff's Motion to Amend Complaint and Cross Claim

IT IS ORDERED, ADJUDGED AND DECREED that:

the motion be, and hereby is, GRANTED. Complaint and cross-claim amended as prayed.

s/Louis Scolnik

Justice, Superior Court

Stipulation dated August 13, 1979

The parties stipulate to the truth of the following facts:

1. On December 8, 1975, decedent, Richard Ridgway represented that he had in force a Serviceman's Life Insurance policy in the face amount of $20,000 payable to April Ridgway.

2. Prior to their divorce, April Ridgway and Richard Ridgway carried on directly and through their attorneys, over a period of many months, negotiations regarding a property settlement including the disposition of Richard's existing life insurance. It was the intention of the parties that any agreement reached as a result of their negotiations would be incorporated into the divorce decree. In the course of the negotiations, a number of compromises were worked out between the parties regarding a division of the marital property and Richard's continuing obligation to support his children. The divorce decree dated December 7, 1977 did in fact incorporate the property settlement ultimately agreed to by the parties.

By stipulating to the truth of the factual statements in the foregoing paragraphs neither Plaintiff Donna Ridgway nor Defendant The Prudential Insurance Company of America concedes the admissibility in evidence of the said statements or facts, and each expressly reserves the right to object to the introduction into evidence of the foregoing statements and facts.

Answer and Defenses of Donna Ridgway to Cross-Claim of Hayley D. Ridgway et al, dated August 13, 1979

1. The allegations in Paragraphs 1, 2, 3, 6 and 8 of the cross-claim are admitted.

2. Plaintiff Donna Ridgway is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraphs 4, 5 and 7 of the cross-claim, and therefore denies same.

3. Plaintiff Donna Ridgway denies the allegations in Paragraph 9 of the cross-claim.

WHEREFORE, Plaintiff and Cross-Claim Defendant Donna Ridgway demands judgment declaring that she is entitled to receive the entire proceeds of the life insurance of Richard H. Ridgway, the subject of this action, free and clear of the rights of any other persons and in full satisfaction of the obligations of The Prudential Insurance Company of America under said policy, and such other and further relief as the Court may find just in the premises.

Defenses

1. The declaration sought by Plaintiffs Hayley D. Ridgway et al. in their complaint and cross-claim is barred by the Supremacy Clause of the United States Constitution.

2. The complaint and cross-claim of Plaintiffs Hayley D. Ridgway et al. fail to state a claim upon which relief can be granted insofar as they allege the theory of constructive trust.

WHEREFORE, Plaintiff and Cross-Claim Defendant Donna Ridgway demands judgment declaring that she is entitled to receive the entire proceeds of the life insurance of Richard H. Ridgway, the subject of this action, free and clear of the rights of any other persons and in full satisfaction of the obligations of The Prudential Insurance Company of America under said policy, and such other and further relief as the Court may find just in the premises.

Defendant Prudential's Answer to Amended Complaint of Plaintiff Hayley D. Ridgway et al, dated August 17, 1979

NOW COMES the Defendant in the above-entitled matter, the PRUDENTIAL INSURANCE COMPANY OF AMERICA, and states as follows:

The Motion of the Defendant to dismiss Count II of Plaintiff, Hayley Ridgway's Complaint (designated April Ridgway's Complaint) was not heard prior to the consolidated hearing on Plaintiff Hayley Ridgway's Motions for preliminary and permanent injunctions against the Defendant on August 13, 1979. Since the motion raised issues which were central to the principal action, by agreement of counsel, and with approval of the Court, the substance of the Motion was subsumed into the principal action.

The undersigned attorney thereupon pointed out to the Court that, with the Motion not having been treated prior to the principal hearing, this left the Defendant in the position of having filed no answer to Count II of the Amended Complaint. Whereupon, the Court ordered that the Defendant be granted a period until August 17, 1979, within which to file an Answer to Amended Count II of the Complaint of Hayley D. Ridgway et al.

In accordance with the foregoing Order, Defendant, the PRUDENTIAL INSURANCE COMPANY OF AMERICA hereby answers Count II of the said Amended Complaint as follows:

1. In response to the incorporated allegations contained in Paragraph 1 of Count II of the Amended Complaint, Defendant repeats and realleges its responsive pleadings set forth to each of the allegations contained in Count I of the Complaint, as if set forth at length herein.

2. Defendant admits that the Plaintiff has taken the actions alleged in Paragraph 2 of Count II of the Amended Complaint, but denies that Plaintiff, Donna Ridgway is or should be a constructive trustee and further denies that the proceeds of the life insurance policy on the life of Richard H. Ridgway should be paid

to April D. Ridgway as the next friend and guardian of Plaintiffs, Hayley D. Ridgway et al.

WHEREFORE, Defendant demands that judgment on the cross claim of Plaintiff Hayley D. Ridgway et al against Plaintiff Donna Ridgway be rendered in favor of the said Donna Ridgway; and that if so rendered the proceeds of the said insurance policy be adjudged payable to the said Donna Ridgway absolutely, and not as constructive trustee for the benefit of Hayley D. Ridgway et al. Defendant further prays that such payment to Plaintiff, Donna Ridgway be deemed finally and totally determinative of the rights and obligations of all parties to this action in and to the said insurance policy and the proceeds thereof, including the obligations of Defendant, the PRUDENTIAL INSURANCE COMPANY OF AMERICA as to the payment of such proceeds.

Order of the Superior Court dated September 13, 1979

This cause came on for hearing, and was argued by counsel, upon the motion of the Defendant to Dismiss and of the Defendant for Consolidation (M.R.C.P. 65(B) (2)) and Hearing on Preliminary & Permanent Injunction _____

IT IS ORDERED, ADJUDGED AND DECREED that:

see decision _____

s/Louis Scolnik

Justice, Superior Court

Decision and Order of Superior Court dated September 14, 1979

This case is before the court on the complaint of April Ridgway, as mother and next friend of Hayley D., Laurie R. and Brady L. Ridgway, for a declaration of rights regarding the payment of the proceeds of a life insurance policy on the life of their father, Sergeant Richard Ridgway. The complaint includes an application for a preliminary injunction enjoining the payment of the proceeds to the Plaintiff, Donna Ridgway (now Pinjani), the widow, and second wife, of Sergeant Ridgway. There is also a cross-claim against Donna Ridgway in Count Two of the amended complaint which seeks to make her a trustee under a constructive trust for the benefit of the minor children of any proceeds of the policy which might be paid to her. A Temporary Restraining Order enjoining the insurance company from paying the proceeds of the policy to the widow is in force. By stipulation, trial on the merits of the complaint has been consolidated with hearing on the application for a preliminary injunction pursuant to Rule 65 (b) (2) M.R.Civ.P.

For the reasons given below, the application for preliminary and permanent injunction, the request for declaratory judgment in favor of the minor children, and the request for imposition of a constructive trust are all denied. The Temporary Restraining Order, granted on April 13, 1979, is dissolved, and the Defendant insurance company is ordered to pay the proceeds of the life insurance policy on the life of Sergeant Richard Ridgway to his widow, Donna Ridgway Pinjani.

The essential facts of the case are not in dispute and have been stipulated. Sergeant Richard D. Ridgway was at one time married to April Ridgway. The couple had three children, who are now the actual plaintiffs in this case. At all relevant times, Richard Ridgway was a member of the armed forces. On December 7, 1977, Sergeant Ridgway and April Ridgway were divorced. It is stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on. Included in these negotiations was discussion of a Servicemen's Group Life Insurance Policy (SGLI) on the life of Sergeant Ridgway, in the amount of $20,000.00, and on December 8, 1975, Sergeant Ridgway told April Ridgway that she was the beneficiary. The result of the negotiations with regard to this life insurance policy was included

in the divorce decree as follows:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard Ridgway married the Plaintiff, Donna Ridgway. On April 3, 1978, Sergeant Ridgway directed that the proceeds of his SGLI policy be paid as specified "by law" which the parties agree directs the proceeds to be paid to Richard's widow, and second wife, Donna.

Sergeant Ridgway died on January 5, 1979. April Ridgway filed a claim under the policy, based on the divorce decree, and Donna Ridgway filed a claim, as widow, based on the above cited statute and April 3, 1978 designation of beneficiary. Following the filing of these claims, April Ridgway, on behalf of her children, filed a complaint against Defendant Prudential Life Insurance Company, seeking a declaratory judgment that pursuant to the divorce decree, the children were entitled to the proceeds of the policy. She included in the complaint an application for a preliminary injunction enjoining payment to Donna Ridgway. She also requested a Temporary Restraining Order enjoining payment of the proceeds to Donna Ridgway, which was granted, without notice, on April 13, 1979. On June 8, 1979, April Ridgway, Prudential Life Insurance Company and Donna Ridgway, all joined in a motion to include Donna Ridgway as a party plaintiff pursuant to Rule 19 M.R.Civ.P. This motion was granted on June 21, 1979. On the same day, April Ridgway, on behalf of her children, filed a cross-claim against Donna Ridgway. By this cross-claim, she seeks to have the proceeds of the policy in the hands of Donna Ridgway subjected to a constructive trust for the benefit of the plaintiff children. A second count was added to the original complaint by a motion granted on July 23, 1979, which likewise requests that the funds be held by Donna Ridgway as constructive trustee to be paid directly to April Ridgway as next friend and guardian of her children.

Although this action is in the nature of an interpleader, the real contest is obviously between the two Plaintiffs. Defendant admits

that it will have to pay the proceeds of the policy to someone but seeks judicial guidance as to the appropriate recipient. Unlike an interpleader, however, the Defendant has taken the position that Donna Ridgway, the properly designated beneficiary of the contract by virtue of 38 U.S.C. §778 (a), is the proper party to receive payment. The issue presented by the amended complaint is whether or not April Ridgway's request for declaratory relief, injunctive relief, and a constructive trust is barred by virtue of the Supremacy Clause of the United States Constitution.

Discussion of Law

Between 1956 and 1965, persons in the military service were not covered by any life insurance under federal legislation unless they had retained government life insurance issued before April 25, 1951. In 1965, owing to the intensification of the Vietnam War, Congress enacted the Servicemen's Group Life Insurance Act. Originally, the Act allowed coverage up to a maximum amount of $10,000.00. The maximum coverage was enlarged in 1970 (P.L. 91-291) and again in 1974 (P.L. 93-289). The present day maximum coverage is $20,000.00. It is automatic for all persons on active duty for more than 30 days. However, the insured is given the opportunity of reducing the coverage to $15,000.00, $10,000.00 $5,000.00 or to cease participation in the program entirely. 38 U.S.C. §767.

The SGLI program is different from past military life insurance programs in that the government is not the insurer. Under SGLI, the Veteran's Administration is authorized to take out a group life insurance policy with a qualified primary commercial insurer. The program is administered by the commercial insurer under the supervision of the Veterans' Administration. 2 U.S. Code Cong. and Admin. News, p. 3317 (1974).

The Administrator of Veterans' Affairs is given the authority to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration." 38 U.S.C. §210 (c) (1). Pursuant to this authority, the Administrator has promulgated several regulations regarding the designation of beneficiaries in an SGLI policy. The insured is allowed to designate "any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. §9.16 (a). Further, "A change of

beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." 38 C.F.R.§9.16 (e).

It is clear that in passing the Servicemen's Group Life Insurance Act in 1965, Congress intended to pre-empt the field of military life insurance. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). The regulations propounded by the Administrator of Veterans' Affairs under the authority of Congress are consistent with the intent of the Act. Compare 38 C.F.R.§9.16 (a-f) with 2 U.S. Code Cong. and Admin. News, p. 3232 (1965). Therefore, any state law inconsistent with the federal statute or regulations is displaced by federal law by virtue of the Supremacy Clause of the United States Constitution. *U.S. v. Shimer*, 367 U.S. 374, 6 L.Ed.2d 908, 81 S.Ct. 1554 (1960).

38 U.S.C. §770, and the regulation promulgated thereunder, does more than provide a procedure for the designation of a beneficiary. The serviceman is given the absolute right to designate any person or legal entity as beneficiary of his life insurance policy. *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (Neb. 1968); *Stratton v. S.G.L.I.*, 422 F.Supp. 1119 (D.C. Iowa 1976). Since the divorce decree orders Sergeant Ridgway to designate a certain group of people as beneficiaries, the decree is inconsistent with the rights given him under federal law, and it must yield. Cf. *In re Marriage of Milhan*, 117 Cal. Rptr. 809, 528 P.2d 1145 (Cal. 1974), cert. denied, 421 U.S. 976. As a result, April Ridgway's request for a declaratory judgment in favor of the cildren, and her application for injunctive relief, based on the rights given in the divorce decree, must be denied.

The Plaintiff, April Ridgway, has also requested that a constructive trust be imposed on any proceeds of the policy paid to Donna Ridgway Pinjani. She argues that while the Defendant may have the absolute right to pay the proceeds to Donna Ridgway by virtue of federal law, federal law does not prevent the insured from making a binding contract for the disposition of the proceeds. She also contends that federal law in no way prevents the court from enforcing such an obligation with a constructive trust for the benefit of her children.

Many courts have held that when a party to a divorce agrees to designate the other party as beneficiary of any life insurance contracts, and such agreement becomes a part of the decree, the

beneficiary of the agreement has an equitable right to those proceeds. If such an agreement is violated by the insured subsequently changing the beneficiary designation, a constructive trust is often the remedy granted by the court. *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E.2d 189 (N.Y. 1978). However, the Simonds case, and all cases so holding, are distinguishable from this case in that they do not involve federal law.

April Ridgway's contention that federal law does not prevent a constructive trust in this situation is without merit. Federal regulations, in addition to giving the insured the right to designate anyone as a beneficiary at any time, also provide that any designation made will be effective only if it is in writing signed by the insured, and received by the uniform service involved before the death of the insured. 38 C.F.R. §9.16 (d) and (f). These regulations are to be strictly construed, *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969). Here, it is undisputed that the divorce decree was never received by the proper office. Therefore, it has no effect on the designation of a beneficiary. Moreover, it is undisputed that, following his marriage to Donna Ridgway, the insured filed a proper form in the proper office to change the beneficiary. Because of the absolute right given the insured to change the beneficiary of the policy at any time by proper filing, this filing, subsequent to the divorce decree, would have changed the beneficiary even if the decree had been properly filed. Therefore, it is clear that federal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the court cannot interfere with this positive federal law by imposing a constructive trust. See *Weymann v. Wilson*, 320 F.Supp. 980 (Fla. 1970).

April Ridgway is correct in saying federal law does not prevent the insured from making a binding agreement for disposition of the proceeds of an SGLI policy. The agreement embodied in the divorce decree is valid, and it would appear to give her a cause of action, on behalf of her children, against the estate of her former husband. *Stratton v. S.G.L.I., supra.* The Supremacy Clause requires that the federal statute override the court's equitable power to enforce such an agreement with a constructive trust. Accordingly, the entry must be:

The Plaintiff, April Ridgway's, request on behalf of her minor children, for a declaratory judgment and for injunc-

tive relief against the Defendant, Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's, request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Amendment to Decision and Order of Superior Court, dated September 20, 1979

The Decision and Order dated September 14, 1979 is amended as follows:

All references to Donna Ridgway Pinjani are changed to read Donna Ridgway.

s/Louis Scolnik

Louis Scolnik
Justice, Superior Court

Notice of Appeal by Plaintiffs Hayley D. Ridgway et al, dated September 20, 1979

Plaintiffs appeal from the judgment of this court issued September 14, 1979.

Further Amendment to Decision and Order of Superior Court, dated October 11, 1979

The Decision and Order of this Court dated September 14, 1979 as previously amended is further amended as follows:

On the final page of the order, the entry of judgment is amended by striking out the period after the words "constructive trust is *DENIED*." and adding the words: "and her cross claim is *DISMISSED*."

s/ Louis Scolnik
Louis Scolnik
Justice, Superior Court

Notice of Appeal from Further Amended Decision, dated October 18, 1979

Plaintiffs Hayley D. Ridgway, Laurie R. Ridgway, and Bradie Leigh Ridgway, by their mother and next friend, April D. Ridgway, appeal from the decision and order of the Superior Court dated September 14, 1979 as amended on September 20th and October 11th.

Stipulation Setting Forth Issue on Appeal dated October 22, 1979

All counsel agree that the facts found in the presiding justice's decision and order as amended are correct and stipulate that the findings of fact are not challenged on appeal. It is also stipulated that all exhibits presented below including the copy of the divorce decree attached to the complaint were properly admitted into evidence. It is further stipulated that the sole issue raised on this appeal is as follows:

> Whether or not the presiding justice erred in ruling that, on the basis of the facts found, he could not impose a constructive trust on the proceeds of Sergeant Ridgway's insurance.

It is also stipulated that, pending a resolution of this appeal, the proceeds of Sergeant Ridgway's life insurance policy which constitute the subject of the appeal will be paid to the Clerk of the Superior Court to be held at interest to be finally disposed of in accordance with the judgment of the Law Court.

Motion Regarding Deposited Funds, dated November 1, 1979, and Order issued on said Motion, dated December 20, 1979

1. This Motion is brought pursuant to 4 M.R.S.A. 556 and Rule 67 of the Maine Rules of Civil Procedure.

2. The subject matter of this action is a dispute between Donna Ridgway and April Ridgway, on behalf of minor children, over the proceeds of a life insurance policy issued by the Defendant.

3. All of the parties are agreed that the proceeds of the said insurance policy, some $20,000 plus accrued interest, should be deposited with the Clerk of the Androscoggin County Superior Court to be paid over to the prevailing party upon entry of final judgment.

4. All of the parties are agreed that the Clerk should be authorized and ordered to invest the said funds in a so-called six month money market certificate, bearing interest at a rate tied to the Treasury Bills issued by the United States Department of Treasury for a period of six months from receipt, and thereafter in the demand deposit yielding the highest available interest rate in the local area until final judgment.

5. Four M.R.S.A. 556 provides that the Court may order the Clerk to pay all of the interest on deposited money to the parties. Absent such an order, one-half of said interest would become the property of the Treasurer of State.

WHEREFORE, the parties join in moving the Court to authorize and order the Clerk to invest the deposited funds with Northeast Bank of Lewiston-Auburn in the described six-month certificate, and thereafter at demand, pay all of the accrued interest to the prevailing party, and provide such other and further relief as the Court may find just in the premises.

ORDER

All the parties being in agreement as indicated by signatures of counsel above, and there appearing no need for further notice, it is hereby ORDERED that the Clerk of the Androscoggin County Superior Court invest the funds to be deposited by the Defendant in a so-called six month money market certificate at the Northeast Bank of Lewiston-Auburn, and upon expiration thereof, at interest on demand until final judgment herein, whereupon the Clerk is ordered to turn over all of the principal and accrued interest to the prevailing party.

s/William E. McCarthy
Justice, Superior Court

Decision of Maine Supreme Judicial Court
dated September 26, 1980

Argued: March 17, 1980
Decided: September 26, 1980

Before McKUSICK, C.J., and GODFREY, NICHOLS, GLASSMAN and ROBERTS, JJ.

GLASSMAN, J.

In this case, we are called upon to decide a very narrow but important issue: whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy in favor of a deceased serviceman's minor children when, contrary to a property settlement agreement and an express judicial decree, the serviceman failed to name the minor children as beneficiaries of that insurance.

Richard Ridgway, a career Army sergeant, was insured under a Servicemen's Group Life Insurance (SGLI) policy in the amount of $20,000. As of 1975, the designated beneficiary of this policy was the insured's wife, April Ridgway. On December 7, 1977, April was granted a divorce from Richard in the Superior Court, Androscoggin County. The divorce decree incorporated a property settlement agreement whereby Richard agreed to maintain for the benefit of his minor children the insurance policies on his life which he then owned. The divorce decree expressly commanded that he

> keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. Six days later, he changed the beneficiary designation on the SGLI policy, directing that the proceeds of the policy be paid as speci-

fied "by law." Under federal law, this designation was effective upon Richard's death to direct payment of the proceeds to his widow, Donna. *See* 38 U.S.C. § 770(a) (1976); 38 C.F.R. § 9.16 (1979). Richard died on January 5, 1979; both Donna, as the decedent's widow, and April, on behalf of her minor chidren, filed claims for the proceeds of the policy.

On April 13, 1979, April filed a complaint in the Superior Court, Androscoggin County, against The Prudential Insurance Company of America after the insurer had indicated that it intended to pay the proceeds of the SGLI policy to Donna. The complaint sought a declaration that pursuant to the divorce decree the minor children were entitled to the policy proceeds as well as both permanent and temporary injunctive relief to prevent Prudential from paying the proceeds to Donna. By stipulation, Donna subsequently joined the action as a party plaintiff, requesting that the insurance proceeds be paid to her. *See* M.R.Civ.P.19(a). By leave of court, April then amended the complaint to designate the three children as parties plaintiff and herself as next friend. *See* M.R.Civ.P. 17(b). By further amendment and the filing of a cross-claim against Donna, April sought the imposition of a constructive trust for the benefit of her children on any proceeds of the policy paid to Donna and an order that in the event Donna was declared a constructive trustee Prudential pay the proceeds directly to the minor children. Following consolidation of the preliminary injunction hearing with a hearing on the merits, *see* M.R.Civ.P. 65(b) (2), the case was submitted on the basis of the stipulated facts.

The Superior Court ruled that federal law gave an insured serviceman an absolute right by statutorily prescribed means to designate or to change the beneficiary of an SGLI policy, and, therefore, under the supremacy clause of the federal constitution, U.S. Const. art. VI, cl. 2, the insurance proceeds must be paid to Donna despite the inconsistent decree ordering the insured to designate the minor chidren as beneficiaries of the policy. On this ground, the Superior Court denied April's request for declaratory and injunctive relief in favor of the children based on rights granted in the divorce decree. The court also denied April's request for imposition of a constructive trust on the insurance proceeds and dismissed the cross-claim against Donna, reasoning that federal law would also prohibit equitable interference with Donna's right to the proceeds of the policy. Accordingly, the

Superior Court ordered Prudential to pay the proceeds of the policy to Donna.

April has appealed on behalf of her minor children. By agreement of the parties, the insurance proceeds have been deposited with the Clerk of the Superior Court awaiting decision by this Court. Because of this agreement, any question as to the propriety of the Superior Court's denial of injunctive relief is moot. The only issue presentd to us is whether the Superior Court was in error in declining to impose a constructive trust on the insurance proceeds for the benefit of the minor children. This issue is joined in April's cross-claim against Donna. We vacate the dismissal of the cross-claim.

Courts have commonly imposed a constructive trust on the proceeds of life insurance policies in the hands of a named beneficiary when the deceased has failed, contrary to the provisions of a property settlement agreement or a divorce decree, to name his divorced wife or his children by his divorced wife as the beneficiaries of the life insurance policies. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, ____, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, ____, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, ____ (1978); *Richards v. Richards*, 58 Wis.2d 290, ____, 206 N.W.2d 134, 138 (1973). Donna and Prudential contend that these cases have no application to Servicemen's Group Life Insurance because Congress has preempted the field and legislated as to how the proceeds of such policies are to be distributed. It is their contention that the supremacy clause of the federal constitution prohibits a state court from imposing a constructive trust on the proceeds of an SGLI policy.

Pursuant to its power over national defense, Congress has adopted legislation establishing the SGLI program. *Cf. Wissner v. Wissner*, 338 U.S. 655, 660-61 (1950). There can be no question that Congress has the power fully to preempt the field when legislating pursuant to one of the express powers granted to it in the Constitution. If it has done so, the supremacy clause prohibits state action inconsistent with the congressional design. In the absence of an express preemption, it has been noted by an authority on consitutional law:

> The question whether federal law "preempts" state action, largely one of statutory construction, cannot be reduced to general formulas. In evaluating patterns of statutory interac-

tion, the Supreme Court has declared generally that whether challenged state action has been preempted turns on whether or not it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." L. Tribe, *American Constitutional Law* 377 (1978), *quoting Hines v. Davidowitz,* 312 U.S. 52, 67 (1941).

Thus, the issue in this case is whether the imposition of a constructive trust on the insurance proceeds in the hands of Donna for the benefit of Richard's minor children "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*

The Servicemen's Group Life Insurance Act (SGLIA), 38 U.S.C. §§ 765-76 (1976), was enacted by Congress in 1965. The SGLIA authorized the Administrator of Veterans' Affairs to purchase from commercial insurers a group life insurance policy which provides qualified servicemen automatic coverage in a maximum amount of $20,000. 38 U.S.C. §§ 766(a), 767(a) (1976). A uniform premium is deducted from the servicemen's pay, but each insured can in writing opt out of the program or reduce the amount of coverage. *Id.*, §§ 767(a), 769(a). The Administrator of Veterans' Affairs has been granted broad rule-making authority in supervising this military insurance program. *Id.*, § 210(c) (1).

Section 770(a) of the SGLIA establishes a statutory order of beneficiary preference. In pertinent part, this section provides:

> Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid . . . in the following order of precedence.
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . . ;
>
> Second, *if there be no beneficiary, to the widow or widower or such member or former member*;
>
> Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation . . . . 38 U.S.C. § 770(a) (1976) (emphasis added).

See also 38 C.F.R. § 9.16(i) (1979). Section 770(g) creates a statutory spendthrift provision:

> Payments of benefits due or to become due under Servicemen's Group Life Insurance... made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 770(g) (1976).

Pursuant to his rule-making authority, the Administrator has promulgated several regulations concerning the designation and change of beneficiaries of SGLI policies. An insured "may designate any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. § 9.16(a) (1979). "Any designation or change of beneficiary will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service...." *Id.*, § 9.16(d). "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." *Id.*, § 9.16(e). "No change or cancellation of beneficiary in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section." *Id.*, § 9.16(f).

The objectives to be achieved by the enactment of the SGLIA were enumerated in a statement by W.J. Driver, Administrator of Veterans' Affairs, which is a part of the legislative history. *See* [1965] U.S. Code Cong. & Ad. News 3232, 3242-43. These objectives were: first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency. *Id.* In the limited circumstances which are here presented, the accomplishment of these objectives is neither obstructed nor interfered with by imposing a constructive trust on the insurance proceeds.

The statutory order of beneficiary preference established by

Section 770(a) does not reflect any federal interest in permitting a serviceman to evade the responsibility to provide for his minor children imposed both by virtue of his voluntary agreement and by the express provision of a valid state court decree. Furthermore, the statutory spendthrift provision found in Section 770(g) has no application to the instant case since its purpose is to protect the proceeds of the insurance from the claims of creditors. We are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds arising from their deceased father's voluntary agreement and a valid judicial decree. Moreover, the promulgated regulations governing the designation and change of beneficiaries do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children.

Prudential and Donna assert that the statutory provisions reflect an intention by the Congress to assure ease of administration by the private insurance carriers. Nothing either in the language or in the legislative history of the SGLIA indicates that Congress at any time was concerned with the administrative convenience of the private insurance carriers.

Prudential and Donna also cite several judicial decisions which, they contend, establish that federal preemption precludes the imposition of a constructive trust in this case. We have carefully examined all those authorities and conclude that they are either distinguishable, not controlling, or both.

For example, in the case of *Wissner v. Wissner*, *supra*, the deceased serviceman had been insured under a National Service Life Insurance policy and had paid the premiums from his pay, which under the law of his domicile, California, was community property. The insured had named his mother as principal beneficiary and his father as contingent beneficiary. The insured's widow brought suit in a California court claiming entitlement to one-half the proceeds of the insurance policy under the state's community property law. Reversing a judgment in favor of the wife, the United States Supreme Court held that the general statutory community property law of the state of California could not override the general statutory provisions governing National Service Life Insurance which gave the insured the right to designate his beneficiary. 338 U.S. at 658-59. The Court specifically noted that a different result might obtain in cases involving

alimony and/or support, stating:

> [W]e must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases. *Id.* at 660 (citation omitted).

In *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), the mother of a deceased serviceman sought to recover the proceeds of an SGLI policy as against the designated bneneficiary, the serviceman's fiancee, on the theory that under state law the serviceman invalidated his designation of beneficiary. The Nebraska court held that Congress, in authorizing a serviceman to designate the beneficiary of his SGLI policy, did not make any exception for minor servicemen and, therefore, the deceased's designation was controlling. *Id.* at ____, 156 N.W.2d at 814.

In *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), a divorce decree issued by a Washington court required a serviceman husband to designate, keep and maintain his wife as the sole beneficiary on his National Service Life Insurance policies. Contrary to this decree, the husband designated another beneficiary and upon his death his former wife sued the United States and the designated beneficiary to recover the proceeds of the insurance policies. The Ninth Circuit Court stated the issue before it as follows:

> Does a state court have the power to effectively require an *unwilling* veteran to maintain his former wife as beneficiary on his National Service Life Insurance policies? *Id.* at 196 (emphasis added).

In reliance upon its interpretation of *Wissner v. Wissner*, *supra*, the court of appeals answered the question it had posed in the negative. It was able to characterize the serviceman in the *Hoffman* case as "unwilling" because he had not agreed to maintain his former wife as beneficiary. In the instant case, the serviceman

had agreed with his former wife to keep his policies in force for the benefit of his children. Thus, the subsequently issued divorce decree did not require an "unwilling" serviceman to maintain his minor children as beneficiaries.

Other cases have involved merely the issue whether certain actions of the deceased serviceman were effective under the SGLIA to designate or change a beneficiary. In *Stribling v. United States* 419 F.2d 1350 (8th Cir. 1969), the court construed the language of the SGLIA strictly, holding there had been no effective change of beneficiary since, as required by Section 770(a), the change of beneficiary form had not been received by the deceased's uniformed service prior to the serviceman's death. *Id.* at 1355. In *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971), the same court construed the SGLIA more liberally, holding that the serviceman had effectively designated his beneficiary since he had satisfied the two elements required for designation: the intent to designate a particular person as beneficiary and an overt act to effectuate that intent. *Id.* at 931. The court further dealt with an issue similar to that decided in *Johnson v. Prudential Insurance Company of America, supra*, namely that the serviceman's mother was not entitled to the proceeds of his SGLI policy on the theory, advanced under state law, that because the serviceman was a minor she had the sole right to his custody, control and services. *Id.*[1] In *Coomer v. United States*, 471 F.2d 1 (5th Cir. 1973), the father of a deceased serviceman brought an action to recover the proceeds of an SGLI policy which had been received by the serviceman's widow. The court held that the serviceman had effectively changed his beneficiary since he had filled out a beneficiary designation form provided by the personnel man in charge of records designating his father as his primary beneficiary and the form had been taken into possession by Navy personnel even though it had not been placed in the serviceman's file at the time of his death. *Id.* at 6.

1. Relying on *Stribling* and *King*, a federal district court has held that a state judicial decree could not alter a serviceman's federal right to designate his children as beneficiaries. *Stratton v. Servicemen's Group Life Ins. Co.*, 422 F.Supp. 1119, 1121-22 (S.D. Iowa 1976). Although we do not disagree with that conclusion, we are concerned here with the authority of a state court to enforce its own decrees by imposing a constructive trust on the insurance proceeds received by the designated beneficiary under a federal statutory scheme containing no express prohibition.

None of the foregoing authorities prohibit the imposition of a constructive trust in favor of the deceased serviceman's minor children in the circumstances of this case. We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its legislative history which would prohibit such action. In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts. Our conclusion not only preserves the integrity of the state judicial process but also provides some assurance that these minor children will not become a public charge. We are not persuaded that Congress intended any different result.

We therefore vacate the judgment dismissing the cross-claim and remand the case to the Superior Court with directions to issue an order imposing a constructive trust on the proceeds of the SGLI policy insuring the life of Richard Ridgway and, since by stipulation the proceeds have been deposited with the Clerk of Courts to be distributed in accordance with the mandate of this Court, directing the Clerk of the Superior Court to pay the proceeds to April Ridgway for and on behalf of her three minor children.

The entry is:

Judgment of the Superior Court dismissing the cross-claim vacated.

Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway.

In all other respects the judgment is affirmed.

Appellant awarded her costs.

Mandate of the Maine Supreme Judicial Court
dated September 25, 1980

The above-captioned cause having been brought before this Court, sitting as the Law Court, from the _____ Superior Court in the County of Androscoggin ; and it having been heard and maturely considered;

IT IS ORDERED that the Clerk of the Law Court enter upon the Law Court Docket and certify to the Clerk of the _____ Superior Court in the County of Androscoggin the following mandate therein: Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs.

For the Court,

/s/ Harry P. Glassman
Justice